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In re Application of	:	DECISION ON PETITION
Pekka Lonka	:	PURSUANT TO
Application No. 10/692,273	:	37 C.F.R. § 1.181
Filed: October 23, 2003	:	
Attorney Docket Number: 297-	:	
008681-US (REI)	:	
Title: MOBILE COMMUNICATIONS	:	
DEVICE WITH A CAMERA	:	

This is a decision on the submission of January 15, 2008, entitled "PETITION FOR RECONSIDERATION PETITION TO REVIVE." This submission is being treated as a petition pursuant to 37 C.F.R. § 1.181, i.e. a request that the holding of abandonment in the above-identified application be withdrawn.

This petition pursuant to 37 C.F.R. § 1.181 is **DISMISSED**.

BACKGROUND

The present application No. 10/692,273 is for the reissue of U.S. Patent number 6,308,084, which issued on October 23, 2001, from application number 09/325,025.

Both a notice of appeal and a "Pre-Appeal Brief Request for Review" were submitted on December 11, 2006. The above-identified application became abandoned for failure to reply in a timely manner to the "Notice of Panel Decision from Pre-Appeal Brief Review," mailed January 23, 2007, which set a one-month period for response. No response was received, and no extension of time under the provisions of 37 C.F.R. § 1.136(a) was requested. Accordingly, the above-identified application became abandoned on February 24, 2007. A notice of abandonment was mailed on January 7, 2008.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

37 C.F.R. § 1.2 sets forth, *in toto*:

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

37 C.F.R. § 1.134 sets forth, *in toto*:

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

37 C.F.R. § 1.135 sets forth, *in toto*:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

ANALYSIS

With this petition, Petitioner has asserted that telephone conferences were held with the Examiner on February 5, 2007, and February 9, 2007, and that Petitioner was under the impression that "the Application would proceed to allowance."¹

¹ Petition, page 2, numbered paragraphs 8-9.

Petitioner has further asserted that the Examiner attempted to enter an Examiner's Amendment and a Notice of Allowability. A print-out of PALM which was provided to counsel by the Examiner on May 23, 2007 via facsimile transmission has been included with this petition. The printout contains the following relevant entries: "EXAMINER'S AMENDMENT COMMUNICATION" and "NOTICE OF ALLOWABILITY," both dated February 20, 2007.

The January 7, 2008 notice of abandonment indicates that non-compliant amendments (dated October 23, 2003, July 17, 2006, and October 27, 2006) along with an unacceptable declaration "are substantive defects which are preventing the Notice of Allowance from being mailed."² Petitioner has further asserted that applicant should have been "provided, prior to the Notice of Abandonment, an opportunity to address the defects that are now being raised in by the Examiner for the first time."³

Essentially, Petitioner is asserting that applicant did not properly respond to the Notice of Panel Decision from Pre-Appeal Brief Review because counsel was under the impression that this application had been allowed: "[t]his application was indicated as being allowed on 20 February 2006 as shown⁴..." in the PALM printout that Petitioner included with this petition.

Petitioner's arguments have been considered, and they have not been deemed to be persuasive, for the following reasons.

First, this application went abandoned by operation of law for Petitioner's failure to properly respond to the January 23, 2007 Notice of Panel Decision from Pre-Appeal Brief Review, regardless of any discussions and information provided afterward. Upon receiving the January 23, 2007 Notice, Petitioner should have timely submitted an Appeal Brief, a Request for Continued Examination (RCE), or a continuation application. None of these responses were timely submitted, and as such, this application went abandoned by operation of law on February 24, 2007, pursuant to 37 C.F.R. § 1.135.

Second, Petitioner has alleged that he was under the impression that a notice of allowability would be forthcoming, due to two telephonic communications he had with the Examiner. However, pursuant to 37 C.F.R. § 1.2, petitioner is not entitled to rely on any understanding that has not been reduced to writing.

Regarding the print-out from PALM, it is clear that while a Notice of Allowability appears as an entry on this sheet, it is equally clear that this same notice was not mailed. Communications from the Office are **effective only upon mailing,**

² Notice of Abandonment, page 2.

³ Petition, page 4.

⁴ Id.

and as such, it is clear that a Notice of Allowability has not been issued in this application.

While it is unfortunate that the Examiner might have made a statement that misled the Applicant into believing that no further action was necessary, the Examiner's statement appears to have been **predicated upon an event happening in the future**, the mailing of the Notice of Allowance, **which did not occur**. The only way that the alleged authorization to enter an Examiner's amendment could be considered to save the application from abandonment would be if the Notice of Allowance had been mailed by the Office.

CONCLUSION

Any reply to this decision must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.181(a)". This is not a final agency action within the meaning of 5 U.S.C § 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail,⁵ hand-delivery,⁶ or facsimile.⁷ Registered users of EFS-Web may alternatively submit a reply to this decision via EFS-Web.⁸

Alternatively, Petitioner may wish to consider filing a petition pursuant to 37 C.F.R. §§ 1.137(a) and/or (b). Unless Petitioner believes that he can successfully show that the entire period of delay was unavoidable, he may wish to file pursuant to the unintentional standard.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

5 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

6 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

7 (571) 273-8300- please note this is a central facsimile number.

8 <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.⁹ All other inquiries concerning examination procedures should be directed to the Technology Center.

/Kenneth M. Schor/

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

⁹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any of Petitioner's further action(s).